



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: SEPTEMBER 06, 2022

IN THE MATTER OF:

Appeal Board No. 623495

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 623490, 623491, 623492, the claimant appeals from the decisions of the Administrative Law Judge filed April 22, 2022, insofar as the decisions sustained the initial determinations, holding the claimant ineligible to receive benefits, effective January 1, 2021, through March 9, 2021, on the basis that the claimant was not capable of work; charging the claimant with an overpayment of \$1,932.00 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation of \$3,000.00 recoverable pursuant to § 2104

(f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 42 effective days and charging a civil penalty of \$739.80 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 623493, 623494, 623495, the claimant appeals from the decisions of the Administrative Law Judge filed April 22, 2022, insofar as the decisions sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 10, 2021, on the basis that the claimant was not available for work; charging the claimant with an overpayment of \$184.00 in benefits recoverable pursuant to Labor Law § 597 (4); charging the

claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$7,800.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid, Relief

and Economic Security (CARES) Act of 2020; charging the claimant with an

overpayment of Pandemic Emergency Unemployment Compensation of \$4,554.00 recoverable pursuant to § 2107 (e)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 80 effective days and charging a civil penalty of \$1,880.70 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances on behalf of the claimant and the Commissioner of Labor.

We have reviewed the entire record and have considered the testimony and other evidence in Appeal Board Nos. 623490, 623491, 623492 and 623493, 623494. It appears that no errors of fact or law have been made in Appeal Board Nos. 623490, 623491, 623492, and 623493, 623494. The findings of fact and the opinion of the Administrative Law Judge are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board in Appeal Board Nos. 623490, 623491, 623492, and 623493, 623494.

Our review of the record, however, reveals that Appeal Board No. 623495 should be remanded to hold a hearing as to the initial determinations reducing the claimant's right to receive future benefits by 80 effective days and charging a civil penalty of \$1,880.70 on the basis that the claimant made willful misrepresentations to obtain benefits. Specifically, the record was not sufficiently developed on the certifications made on May 2, 9, 16, 23, 30, June 6, 13, 20, 27, July 4, 11, 18, 25, August 1, 8, 15, 22, 29, 2021.

At the further hearing, the Commissioner of Labor is directed to appear and produce a witness with first-hand knowledge as to the certifications for the period from May through August 2021. The parties will be confronted with the Certification Record Report (page 56 of 133 of the casefile). The parties should be questioned as to the method of certifications during the relevant period, the certification questions asked of the claimant, the claimant's responses offered during that period, and the reason why she certified in that manner. All documents shall be admitted into the record after an opportunity for objections. The Administrative Law Judge will then take all further testimony and evidence necessary to complete the record in Appeal Board No. 623495.

DECISION: The combined decisions of the Administrative Law Judge in Appeal Board Nos. 623490, 623491, 623492 and 623493, 623494, insofar as appealed therefrom, are affirmed.

In Appeal Board Nos. 623490, 623491, 623492, the initial determinations, holding the claimant ineligible to receive benefits, effective January 1, 2021, through March 9, 2021, on the basis that the claimant was not capable of work; charging the claimant with an overpayment of \$1,932.00 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation of \$3,000.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 42 effective days and charging a civil penalty of \$739.80 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

In Appeal Board Nos. 623493, 623494, the initial determinations, holding the claimant ineligible to receive benefits, effective March 10, 2021, on the basis that the claimant was not available for work; charging the claimant with an overpayment of \$184.00 in benefits recoverable pursuant to Labor Law § 597

(4); charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$7,800.00 recoverable pursuant to § 2104 (f)(2)

of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$4,554.00 recoverable pursuant to § 2107 (e)(2) of the

Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, are sustained.

Now, based on the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, in Appeal Board No. 623495, insofar as appealed therefrom, reducing the claimant's right to receive future benefits by 80 effective days and charging a civil penalty of \$1,880.70 on the basis that the claimant made willful misrepresentations to

obtain benefits, is rescinded; and it is further

ORDERED, that the Appeal Board No. 623495 shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of wilful misrepresentation and civil penalty, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of wilful misrepresentation and civil penalty, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issues only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER